

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on March 17, 2003 at
3:00 P.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. Bob DePratu (R)
Sen. John Esp (R)
Sen. Trudi Schmidt (D)
Sen. Emily Stonington (D)

Members Excused: Sen. Dan Harrington (D)

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 484, 2/27/2003; HB 557,
2/27/2003; HB 703, 3/5/2003
Executive Action:

HEARING ON HB 484

Sponsor: REP. ROY BROWN, HD 14, Billings

Proponents: Chris Christiaens, MT Chapter National Association
of Social Workers
Tootie Welker, Nonprofit Domestic Violence Program,
Sanders County
Marti Wangen, MT Psychological Association
Beth Satre, MT Coalition Against Domestic & Sexual
Violence
Mike Barrett, Poet
Mary McCue, MT Clinic Mental Health Counselors

Opponents: None.

Opening Statement by Sponsor:

REP. ROY BROWN, HD 14, Billings, said it was a sobering sight to see all the red silhouettes that were in the hallways of the Capital that signified the women killed by domestic violence disputes. It had propelled him to bring HB 484, a bill for assessment and counseling of a person convicted of partner or family member assault lest they include a focus on controlling behavior. He offered to help when the Yellowstone County Deputy Attorney called him and expressed his frustration with the lack of progress in changing the rise of domestic abuse in the state. Current statistics focused on anger management as the main tool for treating offenders. Yet domestic abuse was not so much about anger because these offenders were not abusing their friends and neighbors. It was about control. States like Florida and Minnesota focused on controlling behavior treatment rather than anger management and their recidivism of rape was 14% compared with Montana's nearly 85%. **REP. BROWN** originally asked to see if this could be done without legislation and he was told that a treatment of controlling behavior needed to be included, which was what HB 484 did. He said it added to our statutes on Page 2, Line 17 and Page 3, Lines 3-4 and 6-7. He said he had much help with the bill on the House side and several people who originally opposed the bill came together in a subcommittee and came up with the ideas that were in the bill. He handed in an outline of what the bill proposed. **EXHIBIT (phs56a01)**

Proponents' Testimony:

Chris Christiaens, MT Chapter National Association of Social Workers, said the NASW stood in support of HB 484 as it was amended and worked on in the subcommittee in the House. He said there was a good faith effort made by the people who came together and worked on this bill and they strongly supported it. **Mr. Christiaens** said on behalf of the 500 social workers he represented, they believed that this bill was a good workable solution to the issue as it sat and urged for support of it in its current form.

Tootie Welker, Nonprofit Domestic Violence Program, Sanders County, read and submitted her written testimony.
EXHIBIT (phs56a02)

Marti Wangen, MT Psychological Association, said her association was on the subcommittee that worked on the bill in the House and supported the bill as it was in its current form. She said they would adamantly oppose any amendments to it.

Beth Satre, MT Coalition Against Domestic & Sexual Violence, said she was a public policy specialist for the Montana Coalition Against Domestic and Sexual Violence. She said the coalition stood in support of the bill. She said that adding "controlling behavior" was an important element in understanding what domestic violence was. **Ms. Satre** said it was very easy to misconstrue violence as coming directly from anger but domestic violence was really a pattern of controlling behavior exerted to maintain power and control over individuals. One way to think about that was all batterers were very careful about who they exhibit their anger to who they batter. They were very able to control that impulse when they were not in a position of power. They did not usually get mad at, for example, their boss. If they come in late and they were reprimanded it was usually directed toward their intimate partner and perhaps the children in that family. It was for that reason they supported the bill.

Mike Barrett, Poet, Former Councilman, said he was informally representing other artists, gay people and such. It was a genius rope perfectly innovative social plan for an orderly future rather than aggressive repetition of horrors and crimes trying to communicate that in committee statements. He said it had become evidently difficult to him as far as he was concerned about significant changes would solve significant problems and that we needed some innovative legislation. For instance, the problem here, trying to control and prevent domestic abuse and violence, Mr. Barrett was certain the big answer, the fundamental truth about understanding human nature, was in two words:

demilitarizing school curriculums. The hiking for instance, and walking and sex and taste buds were three fundamental and very harmonious natural phenomena. They were absolutely significantly neglected by school curriculums. For instance, with 50 or 100-mile hiking seasons in Junior/Senior curriculums, and bicycling also, there would be in a month approximately, a transference to slower driving control and prevented much control from energy on highways. Similarly, other progressive very fundamental right improvements we should consider more frequently, would include four day school weeks and sex education of very fair quick semi-colored pictures or a few minutes of both, with respective of sexuality, heterosexual and gay encouragements and discouragements to both groups in the class rooms. Just a few minutes from early Junior High School, otherwise frustrating natural emotional development and healthier baby genetics and Romeo and Juliet funding actually for common sense healthier baby genetics over time in long range planning probably had hundreds of years, a thousand of years futures. He said we needed significant changes to solve significant problems and believe in perfection and preventing violence and losses of control. Significant changes included aforementioned hiking, bicycling. He said if we looked, there were pictures of people through history with facial characteristics who experience over lifetimes that nature had a long memory that was woeful consciousness that invented our biologies and we can trace and recognize our spiritual continuity over lifetimes by facial characteristics and experiential consistencies. Artists and teachers or leaders etc. and those in communities and phantoms. The significance of that paper would be in understanding the necessity of schools, healthier babies, earlier marriages and the concept of two to five couple merges in future lifetimes of heterosexuals a more balanced accumulative universal social energy.

Mary McCue, MT Clinic Mental Health Counselors, said it was an association of licensed professional counselors. She said she followed the work of the subcommittee that worked on the amendments to the bill. She said her directive was to tell the committee that the Licensed Professional Counselors did support the bill with the amendments that were in it currently.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. EMILY STONINGTON, SD 15, Bozeman, asked **Ms. Wangen** why the MT Psychological Association adamantly opposed trying to include

language that would hold the offender accountable to another.

Ms. Wangen said they felt that putting any other language in there was working toward mandating treatment and her people were trained to assess these people, look at them, and decide what kind of treatment they thought they should receive.

SEN. STONINGTON asked if she did not think the counselors themselves other than those specialized should hold the offender accountable. **Ms. Wangen** thought they should be held accountable but did not know there was a standard for it and they did not want to mandate any kind of treatment.

SEN. STONINGTON asked **REP. BROWN** to respond to **Ms. Wangen's** statement and to **Ms. WELKER's** comments about the accountability language being applied to all professional persons or counselors involved in this kind of counseling. **REP. BROWN** said the more he got involved, the less he seemed to know. He had just heard about the proposed word change as he walked in the door. He felt he needed to hear more from everyone involved and find out what the consequences of those changes would be. He said that when he originally brought the bill forward, it had a few word changes. He could not say right then or not that would be the right way to go.

SEN. STONINGTON asked **Ms. Satre** to respond also to **Ms. Welker's** and **Ms. Wangen's** comments. **Ms. Satre** said they represented 43 organizations and they would like to have all treatments hold batterers accountable. She said the one thing clearly shown was that there was a need for behavior modification, but at the subcommittee there were others who were not present and could not dial in and they did not have a phone to call them. The language that came out of the subcommittee was a compromise that allowed them to move forward and address the law, specifically the section as it applied and maybe try to figure out ways of holding them accountable. The social workers, the psychologists, and the other mental health people were adamant that prescribing treatment was not something they would support. She said as domestic violence advocates that was where they would ultimately like to go, but they also felt that they needed to have everybody who was provided counseling on the same page as them.

SEN. STONINGTON asked what the substance was of the discussions in the subcommittee. Was it a question of who should be required to hold the offender accountable. **Ms. Satre** said yes. Initially, in the subcommittee there were three changes made on Page 3, Lines 1-4, and on Page 2, Line 30, going on to the next page. Initially there were four subsections and one issue was as the bill came forward, it specifically stated that people who were licensed as defined in Subsection 1 and Subsection 2 would have

to provide a specialized domestic violence intervention program. What that language did was cut out all the domestic violence programs around the state who were and/or could provide those kinds of programs for people who were misdemeanors under this statute. In the subcommittee they talked about whether or not to remove the "and." She said it was clear they wanted to leave the domestic violence programs in, and that the licensed people did not want to be limited to providing a specialized domestic violence intervention program.

SEN. TRUDI SCHMIDT, SD 21, Great Falls, asked with the amendment as it was written, which people, could provide the counseling.

Ms. Satre said social workers and licensed mental health workers. She said it was explained to her by **SUSAN FOX** that the people who were licensed under Federal Statute 37 or maybe under subsection 2, were all medical personnel. It was a broad definition of who could provide that program.

SEN. SCHMIDT asked whether the language being proposed or suggested by **Ms. Welker**, the other people had problems with saying that the counseling would still hold the offender accountable. **Ms. Satre** said that was correct.

SEN. SCHMIDT asked how she delineated what it said and what she was proposed. **Ms. Satre** said she understood what **Ms. Welker** was thinking. **Ms. Satre** said she was not aware that the issue would come forward until she came to the hearing. She said it would be another subsection: Subsection 3, in a specialized domestic violence intervention program and then maybe a comma, then an "and." In Sub-Section 4, that held the offender accountable for the offenders violent or controlling behavior.

SEN. SCHMIDT asked **Ms. Welker** to explain more and where she saw the difference. **Ms. Welker** said she was part of an advisory group many years ago that had come up with some standards for batterer's intervention. She gave a little bit of history why: there was some real difference of opinion on what caused battery and behavior was either psychopathology or it was choice learned behavior. She said for those of us who worked in the field of domestic violence, they believed it was a choice. That it was a learned behavior that needed to be unlearned and part of it was for many men believed that they had the right to batter their partners to get what they wanted. It was not anger because these same people did not beat up their boss or beat up everybody else, only their wife and children. **Ms. Welker** said that when the bill first came in on the House side, she just wanted to nix it all together because it did not deal with the standards that were necessary. She had given **SEN. GRIMES** a copy of the information she had from Florida that really articulated that anyone who was

going to do batterer intervention, needed to cover issues around gender violence, needed to talk about controlling behavior, and needed to talk about emotional abuse. She said they did have another amendment that came out of the bill from last session that dealt with counseling. When she saw the amendment that came out, she found it problematic the way the amendment was written for only those programs that specialized in domestic violence needed to hold people accountable for those controlling and violent behaviors. Ms. Welker said that as someone who had worked in the field for a long time and was part of the Advisory Committee and spent much time working on batterers intervention, it was the MSW's and LPC's that they saw more problems with and how they did their counseling. Their wanting to do anger management, wanting to do couples counseling, and they looked at it as a system that was about communication rather than a choice. She thought that if the amendment were going to be in there about the controlling environment behavior, all the professions needed to be kept at that same standard, if they were really going to address the issues of domestic violence.

SEN. JOHN BOHLINGER, SD 7, Billings, asked **Ms. McCue** how her association would respond to **MS. Welker's** proposal. **Ms. McCue** thought she had done a good job of explaining where we part company and that it had been an issue, not just about this, but last session there was bill that dealt with the whole issue. There was language in Subsection B that said the counseling provider must be approved by the court and what they were trying to observe. **Ms. McCue** thought there would be some type of assessment that would actually address the particular circumstances of that battering situation. She said the social workers, psychologists, and LPC's had talked about it and would like to work with the other groups during the next interim and looking at this body of law and see if they could bring something all parties could be comfortable with. **Ms. McCue** said she was not involved with the subcommittee. Nevertheless, it seemed to her that meanwhile if someone wanted to say the preliminary assessment and counseling must take into account the offenders violent and controlling behavior, so that there was at least one category of licensed, professional people under Subsection 2 and the intervention program, that was reasonable.

{Tape: 1; Side: A}

SEN. SCHMIDT asked if the groups had ever gotten together or started talking about it. **Ms. Satre** thought that everyone involved would be willing to work together. She said the coalition and the National Association of Social Workers had planned to get together and start doing some training in the area.

SEN. JERRY O'NEIL, SD 42, Columbia Falls, said it seemed to him that it made good sense to hold the offender accountable for their violent or controlling behavior and that they were going to require that domestic violence intervention programs make them accountable. He asked why that was not required of all professional persons. **Ms. Wangen** said she was not the person to answer that. She said there were different types of treatment. The domestic violence people thought their domestic violence group was a good way and our psychologists and other professional people think that they also have some good programs. She said that if we started putting criteria and mandating treatments, then we have gone outside the realm. She asked what if a new wonderful way came about to treat these people.

SEN. O'NEIL asked if that was not exactly what they were doing, what she suggested with the domestic violence programs if they passed the bill. **Ms. Wangen** said they did think it is good the way the bill was to go forth. The bill had some language holding them accountable and her association felt it should be up to the licensed person to say how that person was going to be accountable or held accountable and what their treatment options were going to include.

SEN. O'NEIL asked what would happen if a new method became available for domestic violence intervention programs. Were we saddling them with this requirement in the bill. **Ms. Wangen** said she believed her association would be fine with that, if it came out of the subcommittee the way it was.

SEN. ROBERT DEPRATU, SD 40, Whitefish, told **Ms. Wangen** that he struggled with what she was saying. He said down next to the last paragraph, looking at the last three paragraphs, was what **Ms. Welker** was asking for in an amendment. He did not see where that was contradictory but rather it continued to encourage and did not see where it dictated the type of treatment. **SEN. DEPRATU** said the way he read it, it dictated that the person had to finally be accountable for their actions despite who they were coming before and they had to start responding. He could not see where there would be a problem in that amendment. It appeared logical and made sense. He asked her if she felt as adamantly against it as she stated. **Ms. Wangen** said she hoped the committee did not go forward with any amendments because of the reasons she stated earlier. She said the relationship was between the counselor or psychologist and the patient, and if they started adding language in, they were getting between the patient and their treater.

SEN. DEPRATU said it was his opinion after having carried the original Partner Family Member Assault Act and working on it that

it was almost inherent in these issues, the control the batterer's exercised over the victim, which usually kept the victim in, and if the victim did get away, they were later drawn back in only to be abused more. He said he had seen personal examples of that in areas that were close to home and as a result, he went out looking for books he could provide to those people. He said there was much well documented and researched information out there regarding domestic violence. It distressed him if the counseling groups had any concern to whether or not it worked because it seemed to him to be axiomatic with all the information currently available. He asked **Ms. Welker** if she thought she and the others could get together before executive action was taken and come to some form of common ground to see if there was another way to describe it knowing that the committee intended to put some related language in the bill. **Ms. Welker** said she was willing to. She said that what she was trying to get to earlier and the best way she could describe it was that coming to agreement about what was the best way to provide batterer's intervention was like Democrats and Republicans coming together on tax policy. Both came from a different philosophical base. She pointed out that when **Ms. Wangen** spoke of not wanting to dictate what a counselor did with their patient was true, but they were talking about people who were sentenced to counseling because of a criminal activity, therefore it was not the normal counseling where if they wanted to deal with their bad childhood at a later date that was fine. **Ms. Welker** said the counseling added to part of the statute specifically because they were convicted for the offense of battering their spouse, family member, or partner. She said there were 45 states who had batterer's intervention standards, all of which talked about dealing with the controlling behavior, the emotional abuse, etc. It did not dictate which model to follow, but it did say specifically what topics had to be covered. She said they knew from research, and for those of us who work in the field, that those topics played a big part.

SEN. DUANE GRIMES, SD 20, Clancy, said he was disturbed that the counselors would be opposed to wanting offenders accountable for their controlling behavior. He did not think it dictated what type of treatment they did. It just made it clear it needed to be a part of it.

SEN. DEPRATU asked **Mr. Christiaens** if he had a chance to look at what **Ms. Welker** proposed. **Mr. Christiaens** said he had not.

Closing by Sponsor:

REP. BROWN said that what was done now was not working and that other states had used this and it helped them in their problems,

which was what he wanted to do. He said he was open to suggestions to come up with a solution that worked with everyone. He said domestic violence was a huge problem for the victims and the survivors. Last year in his own home district, there was a situation where a man shot his whole family, set his house on fire, and then shot himself. He did not want to lose any more constituents to this kind of activity and he hoped that something could be done that would help. He acknowledged that it was not an answer to all the problems but he thought it was a step in the right direction.

HEARING ON HB 557

Sponsor: REP. JOAN ANDERSEN, HD 23, Fromberg

Proponents: Sandy Stroot, Life Center Northwest
Amy Larsen, Life Center Northwest
Jean Branscom, Governor's Office
Sami Butler, Montana Nurses Association
Pat Melby, MT Medical Association
Jim Ahrens, MT Hospital Association, President

Opponents: None.

Opening Statement by Sponsor:

REP. JOAN ANDERSEN, HD 23, Fromberg, said the title of the bill explained exactly what the bill intended to do. It intended to revise provisions relating to anatomical gifts and provide for the development of the organ donor registry system. It provided for the transfer of organ donor information from the Department of Justice to the Federal Designated Organ Procurement Organization and it limited the use of the organ donor information. It allowed the Department of Justice to recover costs and it clarified the donor's wishes: that the donor's wishes were paramount. Section 1 addressed the legislative findings regarding organ donors and in Section 2 it addressed the issue of how the statewide Organ Donor and Tissue Registry would be handled. There was language amended into the current statute that detailed how information would be transferred to the Donor Registry as well as how changes to the donor statutes might be made. On Page 4, Lines 5-11 remained in statute, which addressed the process of revoking an anatomical gift. On Lines 18 and 19 was language from the title that further clarified the current language regarding the wishes of the donor being paramount in that situation.

Proponents' Testimony:

Sandy Stroot, Life Center Northwest, Senior Organ Donation said Life Center Northwest was federally designated for organs for county organization in this region. There had been 17 people who died while waiting for life saving organ transplants today. More than 80,000 people were waiting nationally for life saving organ transplants and 1200 waiting just in the Northwest region. Due to a shortage of donated organs, nearly half of those individuals listed would die before they had the opportunity for a life saving organ transplant. A current organ donor on drivers licenses as it was stated in the little green words, donor was an indication of a person's wish to donate but there was no common collection for providing access to this type of information to the Organ Procurement Organization. Access was needed to carry out each individual's personal wishes. This bill established an organ and tissue donation registry with no fiscal impact to the State of Montana. The system would greatly improve the number of organs available to transplant for the patients waiting in this region. The system would provide a tool to ensure that every individual's personal decision about organ and tissue donation was carried out. Meanwhile, their family received support during the whole process. Information and the registry would be for the sole purposes of determining an individual's decision about donation at the time of death. This information would not be shared, sold, or used for fund raising purposes because the process of organ donation was confidential and also the information in the registry. It would be treated the same as any medical confidentiality rules. Life Center Northwest would shoulder the development of the system in the year 2003 and had a long term commitment to the success of the registry. The program was successful in 25 states and they modeled this bill after the most successful programs. She asked the committee to join Life Center Northwest in supporting patients waiting for life saving transplants and the families who had carried out their loved ones wishes. They needed to ensure that they continued to create a legacy of life.

Amy Larsen, Life Center Northwest, Volunteer, said sometime in the middle of September 2002, her father called to inform her that after three years of being on an organ transplant list, her mother was finally top priority for a liver. Her dad was excited, relieved, and extremely anxious about what the next few weeks would hold for her family. They were thankful that any day, her mother would start a new chapter in her life. On October 11, her family's new life began as they buried her mother. It had never occurred to any of them that the number one person they needed for a liver would not be found. One question came to mind and that was by how many potential donors' passed. Ms. Larsen said this was why the registry was so important. For the 50% of the people on the list who did not get a liver or the organ so the donor's wish could be carried out and many families could

enjoy a new start.

Jean Branscom, Governor's Office, read and submitted her written testimony. **EXHIBIT (phs56a03)**

Sami Butler, Montana Nurses Association, Registered Nurse, said she was involved with hundreds of donors and their families and she was privileged to be a part of that. MNA hoped that HB 557 raised the profile that all people could be donors and then hopefully it would provide more organs for people that were out there desperately needing them. MNA thought the registry was an important and appropriate step in the process.

Pat Melby, MT Medical Association, said the physicians of Montana Medical Association wanted to thank **REP. ANDERSON** for bringing the bill forward. It made little sense for many who had shown that they wanted to be organ donors and not have those organs available if something were to happen. MT Medical Association strongly supported HB 557 and recommended a DO PASS.

Jim Ahrens, MT Hospital Association, President, said hospitals were involved in this almost on a daily basis. He urged support of HB 557.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. BOHLINGER asked if the little green indicator on his drivers license that said he was a donor really meant nothing because there was not a repository for donor information, unless HB 557 was concurred in. **REP. ANDERSEN** said it did not necessarily mean anything because if the card were on the person when the time came, then someone might be aware of his/her wishes. Although, currently there was not a common registry for the people in Montana who had indicated that they would like to be organ donors.

SEN. BOHLINGER said when HB 557 was put in place and a repository of information was established, how would the information on his drivers license be sent to them and be made available to hospitals and funeral homes. **REP. ANDERSEN** pointed out the fiscal note and said there would be some cost. It would be up to the department of the Motor Vehicle Division and the Department of Justice to transfer that information from people's drivers licenses who had made the designation to Life Center Northwest and with Life Center Northwest there would be no cost to the

State. The cost would be paid by Life Center Northwest so that they would have this information in a common registry and hopefully completed soon.

{Tape: 1; Side: B}

SEN. GRIMES asked if the organ donors who mark their drivers licenses knew their names would be on a registry and would the dissemination of that information be known to them.

REP. ANDERSEN said she did not know the answer to that. She assumed when they marked that, the donors would assume there was some kind of common list or way of knowing they were organ donor registers. For your first question, it said that *"the department shall issue to each applicant who indicates an intent to make an anatomical gift a statement that when signed by the licensee in the manner prescribed in 7217201 constitutes a document of an anatomical gift. The statement must be printed on a sticker that the donor may attach permanently to the back of the donors drivers license."*

SEN. GRIMES asked if that was new law.

SEN. CROMLEY said it was not.

REP. ANDERSEN said it was amended into Section 3 of the bill on Page 3, Line 6-9.

SEN. GRIMES asked if people were going to be notified or be required to put a green sticker on the drivers license noting the person was a donor, would there be a decrease in donors. **REP. ANDERSEN** referred to **Ms. Stroot**.

SEN. GRIMES asked **Ms. Stroot** if she thought this would inhibit people from becoming donors if they knew they were on a registry. **Ms. Stroot** said there were 25 states that were doing this already and many more that were while creating a registry. She said they modeled this after several areas that had success. The main one that they worked with was Colorado and they saw an increase in the number of people who would like to donate because they thought the information was already being shared. They found 75% of the people thought having it on the driver's license was enough but if the driver's license was not available and they did not know what the wishes were, they go to the family. Life Center's current practices were to ask the family if they knew what the member's wishes were. They had seen an increase in donation because people were telling them because they knew their wishes would be followed or carried out. There was a registry and they knew that the information was being put there and in

reference to that, the information remained confidential. She said they did send a card back to them that said they had been registered and this was what they registered for. It gave them the opportunity to amend their wishes or take their name off the list. A website is provided so they could do that.

SEN. GRIMES said he assumed the list would not be sold to vendors or marketing lists. **Ms. Stroot** said no, it was not sold, it was kept confidential.

SEN. GRIMES thought it would be interesting to see what other states had done and see if they had any change in the number of donors that signed up in the process. It sounded like there was plenty of information exchanged. **Ms. Stroot** said she would be happy to provide in writing that information that followed up a few other programs looking at what had happened with their donation rate after they started the program.

SEN. GRIMES said there was a bill in the last few sessions that dealt with whether or not the family members could change the deceased member's request, whether they could intervene or not. He wanted to know how that interacted with the list. **REP.**

ANDERSON said on Page 4 of the bill, Lines 18 and 19, new language was added that said the *"donor's family or health care provider may not refuse to honor the gift for the procurement of the donation"* because in the title of the bill it addressed the issue of clarifying that the donor's wishes were paramount.

SEN. SCHMIDT pointed out in the fiscal note on Page 2, the last line on Number 1, under the technical note that it was unclear the costs if any for maintenance of the organ donor registry would be charged. She asked how that worked in other states.

Ms. Stroot said Life Center Northwest would pay for reasonable cost with the transfer of information with the capability to transfer that information electronically. She said it was unclear what those costs might be with that transfer of information from the Department of Motor Vehicles to Life Center.

SEN. SCHMIDT asked if they would pay for reasonable costs, whatever that was. **Ms. Stroot** said that was correct and that would be worked out as they started incurring costs and to what was reasonable.

SEN. SCHMIDT said the second technical note said there was not sufficient space on the back of the driver's license to place a sticker. In the bill, it said something about placing a sticker on the driver's license and she wanted to know if that were addressed. **REP. ANDERSEN** said that was not changed in the House. They discussed it and **REP. ANDERSEN** discussed it with

someone from the Motor Vehicle Division. She thought it might need to be amended because her understanding was that the driver's license would stay as it currently was and that the person would sign the card containing their statement requiring this.

SEN. DEPRATU asked what the minimum age was to be able to designate that they wanted to donate their organs. **Ms. Stroot** said that age 15 or 16 they could indicate their wishes, but until they were 18 and of legal age, the Life Center would still revert to the practice of asking the parents. It would serve as an indication if someone was under the age of 18, they could be included in the registry, the parents would have to be asked.

SEN. DEPRATU asked if their name would be put on the register when they first get their drivers license because with an eight-year driver's license, it would not come up again. He asked what would be in place during that time. **Ms. Stroot** said they would go ahead and let them be on list and when it came time, they would ask the parents. They would let the parents know there was an indication that their loved one wanted to donate. We would not go through with that without the parents consent before the age of 18.

SEN. BRENT CROMLEY, SD 9, Billings, asked if Ms. Stroot was familiar with the current process and had she seen the form currently being used. Was something signed by the person renewing their driver's licence. **Ms. Stroot** said what they did currently was when someone was asked at the time they renewed a drivers license, it was just a verbal statement saying yes, they would like to donate. If the person doing that had the brochures right there they could have one, but there was nothing else done.

SEN. CROMLEY asked if they contemplated using a new form if the bill passed. **Ms. Stroot** said the plan was to tell people at the time they renewed their license that if they indicated their wish to donate, the information would be down loaded into a secure system and then they would receive a card back that said what they had indicated, stating that this was what we understood their wishes to be and if they would like to amend or revoke all of that, here was the way to do that. They would not be signing anything right then, but would be placed into the system and they would work with them that way.

SEN. CROMLEY said his concern was with the signature. The statute read now and will read in the future that it required a document to be signed by the donor. That was both on Page 3, Line 21 and Line 7, to make an anatomical gift statement when

signed by the licensee. He asked if she had any concerns if it were amended so the form would require a signature of the donor.

Ms. Stroot did not think it would be a problem. She was not sure how it would work. She thought they might be planning on having them sign it at the time they set up the registry. It was something that would need to be clearly stated whether they were going to have them sign something then or if they would be told their name went in and they would be getting a card back. Or, possibly have people sign the card and return it. She was not sure how it would be set up but would get that answered.

SEN. CROMLEY asked about a person who had a driver's license and was currently 17, about to turn 18, did they get a driver's license for more than one year. **Ms. Stroot** said she was not sure about that.

SEN. CROMLEY said his concern was if a person at age 17 could get a driver's license for eight years, they could not sign a consent form until they were 25. If someone was killed before they were 25, it would be a source for organ donation. He asked how those who turned 18 years old would be given the opportunity to sign as an adult because only then would it be effective. **Ms. Stroot** said they would also download the basic information off the front of the driver's license so that they would have a date of birth and know when that person turned 18. If someone was not on the registry and that person died at the age of 21, before renewing their driver's license, they would revert to the current system of what they were doing now: approaching the legal next of kin and asking if they knew what their loved one's wishes were. They would also be promoting a Web Site throughout the state where people could log in and register other than when getting driver's license.

SEN. JOHN ESP, SD 13, Big Timber, suggested for first time licensees something they could sign that said to please contact them when they were 18 or 19 years old because they might be interested in being a donor. There could be some kind of alert to send out the information at the time they became 18. If they did not sign a statement, then you would not bother them until the next time they renewed their drivers' license. He asked what the current donor stickers looked like. **REP. ANDERSON** said she did not know but there was a portion on the front of the drivers license that indicated whether a person was a donor or not. She said there was a question on the application for a driver's license asking if the person would like to be an organ donor and then they signed that application. She said it would seem that the signature would be valid as far as indicating the person's wishes.

SEN. ESP asked if the new donor stickers were more user friendly. **Ms. Stroot** said she was not sure.

SEN. GRIMES asked if the transfer of old donor information from the Department of Justice to federally designated procurement organizations would be part of a national data base. **Ms. Stroot** said with only 25 or more states involved, the way it currently worked was if a person from Montana were in Arizona and was a donor, they would call the Organ Procurement Agency in Montana and ask if the person was registered there. If he was, he would be seen on the registry base. It was more of a state by state basis although they would share information. They would not have access to Montana's information at this time because of the confidentiality in having it.

SEN. GRIMES said we would benefit greatly if all were on a national list of donors as opposed to a regional list where we were prioritized per region. He asked if it were true that everybody that was waiting on the list, all 80,000 was prioritized nationally. **Ms. Stroot** said that was correct. The way the list worked was that when a person was listed, there were no board of transplant programs in the State of Montana, so if he were in Seattle waiting, he would be placed on a regional list. He would have local and regional priority for organs in his area but then he would also be on the national list which was categorized by how sick a person was, how far away he was from a donor, and how long he had been waiting. There was a national priority also so the list was one big list.

SEN. O'NEIL said he had read somewhere that some magazine was advocating for allowing the old organ donor to let his family receive part of the charge of transplanting that organ, like 5% or something. It said that would create more organ donors. He asked if any state had done that yet.

Ms. Stroot thought Florida and maybe Texas were currently looking at systems like that. One system she heard of on a national committee was a system to where the family could receive a stipend that went toward funeral costs. Currently for organ donation, they pay for the cost at the hospital so there was not a cost to be an organ donor but they do not pay of course for the funeral services. A few states looked at that, although in the ethical debates that took place in their committees it looked like a person was being paid to be an organ donor. The other idea was to give some type of rebate, some type of incentive if a person registered to be an organ donor but that opened a whole can of worms regarding ethics when paying somebody to be an organ donor.

{Tape: 2; Side: A}

SEN. CROMLEY asked if **Ms. Stroot** were affiliated with the hospitals. **Ms. Stroot** said she was with the Organ Procurement Organization and that she worked with all of the hospitals in the State of Montana with their policies, procedures, and education.

SEN. CROMLEY asked whether hospitals or medical centers felt they could take the organs legally based on a person's drivers license or do they still try to get additional consents from next of kin. **Ms. Stroot** said the hospitals referred a patient, who was either dead or death was eminent, to the Organ Procurement Organization and then they evaluated if they were a potential for donation or not. If the hospitals go by what their policy and procedure was, which according to the Anatomical Gift Act, it was okay to go by what was on the drivers license or a donor card. She said that was not their current practice, which was to ask the legal next of kin to sign a consent form. There were a couple of reasons: (1) they did not know when somebody said yes to being an organ donor, if that was really an informed consent because they did not know what they were told then; and (2) a registry gave better control over knowing the information was given to them and that they knew what they were consenting to.

Closing by Sponsor:

REP. ANDERSEN thanked everyone who came to testify for his bill and for **Ms. Stroot's** expert testimony. She said she was honored to carry the bill because she felt it was an important step to take by developing a registry so that they could provide more opportunity for people needing transplants and for those who were willing to be donors and have their wishes carried out.

HEARING ON HB 703

Sponsor: **REP. JOHN PARKER, HD 45, Great Falls**

Proponents: **Beth Satre, Coalition Against Domestic & Sexual Violence**
Peggy Drayer, Violence Free Hotline, Whitefish
Terry Kendrick, YWCA, Missoula
Julia Heemstra, The Network Against Domestic Abuse & Sexual Assault
Tootie Welker, Nonprofit Domestic Violence Program, Sanders County
Shirley Brown, DPHHS, Child & Family Services

Opponents: **None.**

Opening Statement by Sponsor:

REP. JOHN PARKER, HD 45, Great Falls, said HB 703 addressed one main concern. It was his position that a woman who was a victim of domestic violence should not have her children taken away simply because she had been victimized in that way. He asked to keep that in mind as he turned everyone's attention to the bottom of Page 3, Lines 29 and 30. The first thing the bill did was create an exception to the definition of psychological abuse or neglect with the purpose of amending the current law to clarify that just because a person had been a victim and had potentially subjected their child to being in that situation that alone was not a basis for removing a child from the home. He said we might ask ourselves, what protections were afforded to the child in that situation. He said they tried to respond to those concerns at the bottom of Page 5, starting on line 26, which would set forth a policy that would allow the department, the Child and Family Services Division, a range of options to ensure for the protection of the child without automatically taking the child away from the victim. **REP. PARKER** turned the time over to others there who he felt could illuminate the need for the bill and clarified several points.

Proponents' Testimony:

Beth Satre, Coalition Against Domestic & Sexual Violence, said HB 703 was one of the most important pieces moving through the legislature for Montana's domestic violence programs this year. She said they currently had 43 member organizations. In the past year they provided direct services to 8,063 victims of domestic violence and primarily those victims were women and children who came from all counties in Montana. She said the bill would accomplish most things: One, it would make it clear that the victims of domestic violence would not be revictimized by the law by simply being guilty of child abuse by virtue of the fact they could not control the actions of another. In fact they were crime victims and it clarified that it was the commission of acts of violence against another person who was with the child at home that really was the child abuse. **Ms. Satre** said it was very important. The second section amendments spoke policy within the Child Protective Service Organization. Numbers of women were becoming more hesitant to come forward to seek the help they needed that would allow them to leave a violent relationship permanently if they had children. HB 703 would put the emphasis on child protective service workers to try to keep the child with the non-battering parent if in fact that was the safe place for the child to be. This was an important step forward in policy. Sometimes it was easier and holding the batterer accountable was less easy, to be criminally accountable for his or her behavior

if they were guilty of committing criminal assault on their partner. She said there were many people from programs who could speak to the effects of the current law to those who were seeking help and the importance of changing the law. One question that many people asked was why women did not leave a person that battered them. That was not the question to ask. A better question was why do we allow people to continue battering, why were we not holding them accountable. One answer to why women chose not to leave was because often it was the most dangerous action a person could take. About 75% to 90%, of the people who were killed by their intimate partner, were killed or severely injured within the first year after they had left or after they decided to file for divorce or had made it clear they were leaving.

Peggy Drayer, Violence Free Hotline, Whitefish, read and submitted written testimony. **EXHIBIT (phs56a04)**

Terry Kendrick, YWCA, Missoula, said they were a local program that provided services to victims of domestic violence and their children. HB 703 changed the definition of psychological abuse so that victims of domestic violence could not be held responsible for failing to prevent the crime from occurring in their home. This change held the person who battered accountable for the crime rather than the victim. It protected the victim from being charged with child abuse and neglect. HB 703 directed Child Protective Services to help children remain with the Mom or Dad or any parent in domestic violence cases by removing the person who battered from the home rather than the child. HB 703 also directed Child Protective Services to give victims information about local domestic violence services and criminal justice. The bill also directed Child Protective Services to protect the child in these cases from having unsupervised visitations with the person who battered.

Julia Heemstra, The Network Against Domestic Abuse & Sexual Assault, said she was the shelter coordinator at the Domestic Violence Shelter in Bozeman. She stood in strong support of the amendments proposed to HB 703. As an advocate for victims of domestic violence and a mandatory reporter of child abuse she recognized how the current law could be construed as just another obstacle for a victim who was making the courageous choice to leave an abusive relationship. With the law reading the way it did, in a Domestic Violence situation, both the abuser and the victim were guilty of psychologically abusing their child or children if the child or children had witnessed the abuse. Since somebody suggested that close to 80% of children who grew up in abusive households witnessed the violence sometime or another, it meant that as a mandatory reporter she should be reporting almost

every parent who called their crisis line or who walked through the doors of their shelter. Such a requirement trumps one of the primary missions of crisis centers to be a safe and confidential space for our victims to flee or to discuss the violence in his or her life. She asked who would flee to a place with his or her children knowing that he or she would immediately be reported for child abuse upon arrival. While we may understand that such a report might stimulate a CPS investigation into the family situation, what that meant in most of her client's minds was that CPS would be taking their children. Furthermore, threatening to report false incidents of child abuse to CPS was one of the most common forms of emotional abuse exercised by abusers on their victims. Tragically, the fear of losing their children to the state was a fear that was all too real for many victims even before they come in contact with the crisis center. Fortunately with the current amendment proposed in Section 2, Number 18, the problem would be alleviated with a clause, "the term psychological abuse may not be construed to hold a victim responsible for the admission of failing to prevent the crime against the victim." If this amendment were passed in this respect, victims would no longer be penalized for batterers abusive actions. The amendments proposed in Section 3 were equally encouraging and self explanatory. Essentially these changes offered additional protection to victims of domestic violence regarding child removal. In addition, these amendments advocated for removing the abuser from their home and protected the child from placement or having unsupervised visits with the abuser until CPS determined that the abuser had met the conditions necessary to protect the safety of the child. **Ms.**

Heemstra said she highly endorsed those changes and the final amendment in Section 3, Number 3. It stated that if "*CPS determined an adult member of the household was a victim of domestic violence or family member assault, CPS shall provide a victim with a referral to a domestic violence program.*" She said as a representative of such a program, such consistent referrals would be a dream come true. She passed out a fact sheet about the troubles of family violence in our country, state and local community and a brochure of services offered. **EXHIBIT (phs56a05)** She said a significant portion of our population would benefit from the proposed amendments to this law.

Tootie Welker, Nonprofit Domestic Violence Program, Sanders County, said she wanted to address the reason that people asked "why doesn't she leave." She said we needed to put the focus on "why does he batter her." She said she came from a county such as where unemployment was high and there were not a lot of jobs and there was much poverty. Economics was one of the main reasons besides fear that women did not leave and for them to go through the indignity of having CPS get involved and perhaps

losing their children because they were not protecting them, was not worth it. She said it did not address all of the issues around mandatory reporting but it went a long way in correcting a problem for those who worked in the field.

Shirley Brown, DPHHS, Child & Family Services, said they supported HB 703. They worked with both the domestic violence people and the sponsor in the final legislation. The purpose of this bill was to acknowledge in statute that the dynamics of the family, when there was domestic violence, was different in that the dynamics in the family, the children were the victims. The dynamics were different because there may be two victims, not one victim, the child was a victim as well. They agreed that the abused adult should not be further victimized as related to the children but they also acknowledge that there must be a balance between not victimizing the adult victim and protecting the children. They believed HB 703 protected children while considering the needs of the abused partner. **Ms. Brown** said she spoke to **REP. PARKER** about a recommended amendment on Page 6, Line 6. She recommended the "and" be changed to "or" to give them more flexibility in the list of things that the Social Worker would do.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. GRIMES said he was in full support of the bill.

{Tape: 2; Side: B}

His concern was that he knew CFS was stretched thin. He asked **Ms. Brown** if she had a problem with the way the language was worded saying that if either a Social Worker or a Peace Officer or a County Attorney determined that there was something going on, then CFS was required to almost become the expert. This seemed different because they would be deciding in other areas dealing with orders of protection between adults. They would be determining, on Page 6, Line 10 that the adult member was the victim. **SEN. GRIMES** asked if this would create additional work for them or was it something they did already.

Ms. Brown said in response to his first question, the language regarding if a Social Worker, the Peace Officer, or County Attorney reflected the language in 4-13-301 Subsection 1 on Lines 18 and 19. When it came to Emergency Protective Services, the Social Worker, Law Enforcement, and the County Attorney could

determine whether a child was already harmed so it mirrored that language. To answer the second question, she said they looked at that very closely to see if it did really expand what they had to do and in many ways they were already doing it. The language said if they decided the child, on Page 5, Lines 26-27 was in danger because of the occurrence then these were the things that they were going to be doing. As a practical matter, law enforcement did not do any investigations, CFS did. If it were a domestic violence situation, law enforcement went out. They would call CFS and they would be the ones who worked with the family. **Ms. Brown** said it was one of the reasons she wanted the "or" instead of the "and." It said that this was what they must do if the Social Worker determined that the children were in danger because of the partner member being assaulted and they had to make reasonable efforts to protect the child but they did that anyway. They already had the second part of Subsection B, which removed the assaultive member. They would have to tie that with filing a petition for emergency protective services because they had the ability, under the statute now, to ask the court to order the person to leave, therefore it had to read along with all of the authorities. Then if they made it an "or" they could do what was most appropriate for the child. It was what they were doing now, but she wanted to make sure it was reflected in statute that it was public policy of the State of Montana.

SEN. GRIMES asked **Ms. Satre** if she thought the department was helpful in accomplishing her end and were they doing that currently. **Ms. Satre** said one reason they found the bill so important was that there were many things Social Workers in Montana understand about domestic violence. They did their best to work with their victims to alleviate and reduce the problem and/or help a victim leave a violent relationship. There were however, other pockets where that was not occurring and as **Ms. Brown** referred to, this was important to us to have the policy in statute so that their domestic violence advocates around the state could refer to it and say "this was in statute and we want you to try to do this," also having the referral in Subsection 3, to a domestic violence program was very important because they wanted to have that information to be certain.

SEN. GRIMES said he thought all who came and those who worked in the domestic violence programs along with the social workers who were helping were absolute heros in our society.

SEN. STONINGTON asked how spread out the shelters were in Montana. **Ms. Satre** said it depended on how shelters were defined. DPHHS had a domestic violence based program and they currently had 23 grantees who were receiving money for providing domestic violence intervention services. There was one in Miles City.

Thompson Falls was not a vastly urban center; and there was one in Bozeman, Missoula. Glasgow had a center, to name a few. There were some satellite programs as well and unfortunately there was not one in every county but there were services provided.

SEN. STONINGTON asked if she lived in a small town like Circle and wanted to leave her relationship, where would she go to find shelter. **Ms. Satre** said Miles City. **Ms. Drayer** said they had people who provided emergency transportation as well.

SEN. STONINGTON asked if that were all funded through DPHHS. **Ms. Drayer** said some of it was and they also worked on private donations. Some were United Way Agencies and other different contributions. They did provide a lot of emergency transportation to get people to the shelters.

SEN. STONINGTON asked for a description of the program that DPHHS provided. **Ms. Brown** said they had a federal grant through their division of more than \$700,000 that 75% had to go to shelters and in those areas in Montana where we do not have shelters there were safe havens, places where people could go. In the last calendar federal year they provided more than 30,000 shelter nights, safe nights for children and families. The federal grant had a match in that they did get a little general fund as well.

SEN. ESP asked if anyone asked about the language on Page 6, Line 3 regarding the adult victim needing an order of protection. **Ms. Brown** said it did not require the social worker to become a legal expert and try to advise the person on it or walk them through how to get one.

SEN. ESP said the language troubled him a little where it may include the adult victim of getting an order of protection. He asked if there was some way it could be clarified to include encouraging the adult to pursue a protection order. **Ms. Brown** said it would be fine with them and if he wanted to clarify that social workers were not being attorneys that would be great.

SEN. O'NEIL said he read somewhere that a Broadwater County Sheriff was fined in a Civil case for something like \$200,000 or more for failing to tell someone about orders of protection. He asked if that language gave CFS more liability because it was telling them they should urge victims to get an order of protection. **Ms. Brown** said she was willing to do an amendment. They did have some concerns on Line 30 of Page 5. She said it was another reason they wanted the "or" because if they had the "or," whatever fit for that particular case, it did not mean they had to do all three of those things.

SEN. CROMLEY said there might be a motion on Page 6, Line 6 to change an "and" to "or." He said he was probably going to argue against it because he thought it would make it exclusive as opposed to inclusive. **REP. PARKER** said he spoke with **Ms. Brown** earlier and he would support amending it to an "or." He said it might be advisable to grant some flexibility to a social worker in that situation. He said with **SEN. CROMLEY's** proposed opposition, he would welcome whatever amendments the committee felt would be necessary to make it appropriate and workable. He said the bill came late to the House Judiciary Committee and people were hoping to introduce amendments and they ran out of time. He said if the committee was interested in giving it some more scrutiny, he welcomed that.

SEN. ESP asked **REP. PARKER** if he remembered who had concerns and who were thinking of putting amendments forward and what those might be. **REP. PARKER** said there was a generic concern in the minds of several committee members that the bill gave additional authority to social workers. He personally did not believe that was what the bill did. He thought the proposed amendments on Page 6 actually provided more structure and guidance to the social workers in how to proceed in a case. He said there was a desire on some people's part to make the amendment they were suggesting on Line 3 of Page 6. He said he would welcome that amendment about inserting the word "encouraging" between the words "include" and "the." It would be a clearer explanation in the State Code.

Closing by Sponsor:

REP. PARKER said he believed the bill could strike an appropriate balance by insuring that a victim was not held accountable for being beaten and have them lose their child just because of that unfortunate situation. At the same time he believed the bill provided protection for the child. It set forth a clear pattern of how to proceed in a case of this kind. He said he neglected to mention in his opening that he worked as a Deputy County Attorney and had prosecuted many cases. He said from his experience, the victims were always reluctant to cooperate with the prosecution. He could think of only one case in which the victim actually wanted to take part. A big reason among many others why they were reluctant was they were fearful of having their children taken away. The batterers were manipulative and they knew the rules of the game. After prosecuting several people more than once, he could say for a fact that it was true and that until these people were held accountable through successful prosecution, forcing a break in the behavior was hard. **REP. PARKER** thought that taking away this impediment for victims

and giving them a greater incentive to take part in the prosecution would be doing society a favor. He thanked the witnesses for coming and said he would appreciate a favorable recommendation on this bill.

ADJOURNMENT

Adjournment: 5:18 P.M.

SEN. JERRY O'NEIL, Chairman

ANDREA GUSTAFSON, Secretary

JO/AG

EXHIBIT (phs56aad)